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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/775,287

02/10/2004

David M. Carrizales JR.

1166

42794

7590

02/26/2007

DENNIS W. BEECH (LAW OFFICE OF DENNIS W. BEECH)

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EXAMINER

CONLEY, SEAN EVERETT

ART UNIT

PAPER NUMBER

1744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/775,287

Applicant(s)

CARRIZALES, DAVID M.

Examiner

Sean E. Conley

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed November 20, 2006 has been received and considered for examination. Claims 1-3, 5, 7, 9 and 10 remain pending.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 5, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herold (U.S. Patent Application Publication No. 2004/0003821 A1) in view of Newman (U.S. Patent No. 5,215,719).

Regarding claims 1, 7 and 10, Herold discloses a device having an illuminating element (30) and an aromatic material burning element (incense) comprising: a base member (enclosure (40)) adapted to receive a transparent tray (10) in an upper cavity (formed at lip (44)), the base (40) also includes an illumination means (30) mounted in a lower cavity (at reflector (20)), and an incense housing member (incense holder (80) mounted to a wire (82)) mounted to base member (40). The light source (30) directs light upwardly out of the device (see figures 1-5; see paragraphs [0026]-[0028]). The incense holder of Herold is not suitable for burning a long stick of incense and also

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Herold is silent with regards to an incense housing member disposed in an upper cavity of the base member (40).

Newman discloses an incense burner (10) that comprises an upright cylindrical tube (12) supported on a base (14). The top end of the tubular member remains open and is provided with a clip member (20) for engaging onto an incense stick (22). The clip member (20) is supported by a peripheral edge of the open end of tubular member (12) (see figure 1; col. 2, lines 59-67). Furthermore, the tube (12) includes a vent hole (16) for circulating air through the tube to improve burning of long incense sticks and collection of ash (see col. 1, lines 5-12; see col. 2, lines 30-67; see col. 3, lines 7-17). Additionally, the tubular member is preferably made of a plastic material, such as a clear, translucent, colored, or opaque polycarbonate material (see col. 3, lines 7-26). This arrangement

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Herold and replace the incense holder (holder (80) attached to wire (82)) with the incense holder of Newman (transparent tube (12) with clip member (20)) and place it in tray (10) so that the device of Herold is suitable for burning long sticks of incense and also provide a means for enhanced collection of the ash from the burning of such long incense sticks. This combination results in the incense housing member comprising the tube (12) with clip member (20) of Newman and tray (10) which are disposed in the upper cavity of the base member (enclosure (40)) of the invention to Herold.

Regarding claim 2, Herold discloses that the light source (30) is disposed within a cavity of the base member (40) and is further interconnected to a power source (see figures 3-4; see paragraph [0028]). It is well known in the art of lamps to incorporate a switch to easily and conveniently turn the power to the lamp on and off in order to save energy and also increase the lamp life by turning off the lamp when it is not in use.

Regarding claim 3, Herold discloses the power source may be a battery (see figure 2; see paragraph [0028]).

Regarding claim 5, lip (44) of Herold provides the step portion for supporting the incense housing member (tray (10) of Herold in combination with transparent tube (12) and clip (20) of Newman) (see figure 1 of Herold; see figure 2 of Newman).

Regarding claim 9, Herold discloses that the device includes a color wheel (50) positioned directly above the light source (30) so that colored light is emitted from the light source upwardly through transparent tray (10) (see figure 5; see paragraph [0028]).

Response to Arguments

4. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection. The applicant's amendment necessitated the new grounds of rejection because claims 4, 6, and 8 were added to independent claim 1. Previously, claims 4 and 6 depended from claim 1 and claim 8 depended from claim 1. However, claim 8 did not depend from either claim 4 or 6. Since the applicant has amended claim 1 to include the limitations of claims 4, 6 and 8, the scope of the claims has changed and a new search is required for the combination

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of claims 4, 6, and 8 in combination with claim 1. Therefore, the amendment has necessitated the new grounds of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 19, 2007


GLADYS JP CORCORAN
SUPERVISORY PATENT EXAMINER